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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MICHAEL BEAL, et al.,

No. C 13-04911 LB

Plaintiff,

v.

ROYAL OAK BAR, et al.,

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION FOR JUDGMENT ON THE  
PLEADINGS**

Defendant.

[Re: ECF No. 21]

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**INTRODUCTION**

Plaintiffs Michael Beal and Ashley Jackson (collectively, “Plaintiffs”) are suing for injuries resulting from an alleged physical altercation with defendant Ares Papageorge on the premises of defendant Royal Oak Bar (the “Royal Oak”) (collectively, “Defendants”), a bar in San Francisco, California, on the night of March 17, 2010. *See* First Amended Complaint (“FAC”), ECF No. 1-7 ¶ 3-8.<sup>1</sup> Shortly after answering Plaintiffs’ First Amended Complaint, Defendants moved for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). *See* Motion, ECF No. 21; Memo, ECF No. 24. Pursuant to Civil Local Rule 7-1(b), the court finds this matter suitable for determination without oral argument and vacates the May 15, 2014 hearing. Upon consideration of the papers submitted and the applicable legal authority, the court **GRANTS IN PART** and **DENIES**

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<sup>1</sup> Citations are to the Electronic Case File (“ECF”) with pin cites to the electronically-generated page number at the top of the document.

1 || **IN PART** Defendants' motion.

## STATEMENT

3 According to the First Amended Complaint, on March 17, 2010, at approximately 11:30 p.m.,  
4 Plaintiffs entered the Royal Oak and sat at the bar to socialize over drinks. When Plaintiffs were  
5 finished, Mr. Beal attempted to retrieve his credit card from the bartender. FAC, ECF No. 1-7 ¶ 8.  
6 A dispute ensued: Mr. Beal believed that the bartender still had his credit card, while the bartender  
7 insisted that he already gave the card back to Mr. Beal. *Id.* The dispute escalated to a physical  
8 altercation when Mr. Papageorge intervened and confronted Mr. Beal. *Id.* Mr. Papageorge told Mr.  
9 Beal to “get the f–k out of my bar” and hit Mr. Beal on the head with a blunt object that Plaintiffs’  
10 believe was a baseball bat. *Id.* Mr. Papageorge continued to strike Mr. Beal’s head and the back  
11 with the weapon while Mr. Beal was on the ground. *Id.* Mr. Beal’s head bled profusely. *Id.* Mr.  
12 Papageorge also threatened to hit Ms. Jackson with the weapon when she attempted to stop the  
13 assault on Mr. Beal. *Id.* The police eventually arrived to the scene, and Plaintiffs subsequently filed  
14 a criminal complaint against Mr. Papageorge. *Id.*

15 Mr Beal was taken by ambulance to University of California - San Francisco Medical Center's  
16 Emergency Department where he received a CT scan and stitches for his head wound. *Id.* at ¶ 9. He  
17 claims that as a result of the attack he suffered from nausea, disorientation, and severe bleeding from  
18 his head. *Id.* He also had to return to the hospital a few days after the initial visit with symptoms of  
19 continued nausea, dizziness, visual impairment and headaches, all of which persisted for several  
20 months after the alleged incident. *Id.* The head wound has left a permanent scar. *Id.* Ms. Jackson  
21 asserts that she was traumatized by seeing Mr. Papageorge attack Mr. Beal and because of his  
22 threats to hit her, too. *Id.*

23 Plaintiffs filed this action in the San Francisco Superior Court on April 29, 2011. *See Original*  
24 *Complaint*, ECF No. 1-3. On June 7, 2013, after discussions about whether Plaintiffs would have to  
25 submit to an examination by Defendants' medical experts, the parties entered into a stipulation (the  
26 "June 7 Stipulation") that provides as follows:

27       1. This matter arises from a disturbance at the Royal Oak Bar in San Francisco on  
28       March 17, 2010.  
          2. This personal injury action was filed by Plaintiffs Michael Beal and Ashley

1 Jackson on April 29, 2011. Defendants Ares Papageorge and the Royal Oak Bar  
2 answered the complaint; Cross-Complainants Ares Papageorge and Royal Oak Bar, a  
3 California Corporation filed a First Amended Cross-Complaint to which  
4 Cross-Defendants Michael Beal and Ashley Jackson answered.

5 3. Plaintiffs Michael Beal and Ashley Jackson's motion for leave to file a first  
6 amended complaint is set to be heard in this Court on June 7, 2013. In that motion,  
7 Plaintiffs seek only to add to their prayer for relief claims for (a) pain and suffering,  
8 and (b) punitive damages. Defendants Ares Papageorge and Royal Oak Bar have  
9 opposed that motion.

10 4. Defendants demanded a mental examination of both Plaintiffs in connection with  
11 the plaintiffs' claims of depression, PTSD, paranoia, and related psychological  
12 claims.

13 5. There has been extensive motion work in connection with the plaintiffs' claims of  
14 depression, PTSD, paranoia, and related psychological claims.

15 6. The parties, through counsel, in view of the above, the history of this case, and  
16 California law, hereby agree pursuant to California Code of Civil Procedure (CCP)  
17 section 2032.320(c), Plaintiffs stipulate and agree no claim is being made for mental  
18 and emotional distress over and above that usually associated with the physical  
19 injuries claimed; they will not claim depression, PTSD, paranoia, or related  
20 psychological conditions as injuries in this case. Further, Plaintiffs stipulate and  
21 agree that no expert testimony regarding this usual mental and emotional distress will  
22 be presented at trial in support of the claim for damages. Plaintiffs are not claiming  
23 any psychological disorders, injuries, or conditions were caused by what transpired at  
24 the Royal Oak Bar on March 17, 2010, and shall not present any such evidence at  
25 trial over and above that usually associated with the physical injuries claimed.

26 7. In exchange, Defendants shall not seek mental examinations of Plaintiffs and shall  
27 drop their demands for mental examinations of both Plaintiffs under CCP section  
28 2032.310, et seq.

18 June 7 Stipulation, ECF No. 1-13 ¶¶ 1-7.

19 Plaintiffs filed the operative First Amended Complaint on September 13, 2013. *See* FAC, ECF  
20 No. 1-7. In it, Plaintiffs bring the following four claims: (1) Battery against Mr. Papageorge; (2)  
21 Assault against Mr. Papageorge; (3) Intentional Infliction of Emotional Distress ("IIED") against  
22 Mr. Papageorge; and (4) *Respondeat Superior* liability against Royal Oak. *See Id.* ¶¶ 10-20. They  
23 seek special damages, general damages, punitive damages, reasonable attorney's fees, costs, and  
24 such other and further relief that the court deems just and proper. *Id.* at 6-7.

25 On October 23, 2013, Defendants removed the case to this court. *See* Notice of Removal, ECF  
26 No. 1. At the court's direction, *see* 2/13/2014 Minute Order, ECF No. 12; 2/26/2014 Order, ECF  
27 No. 17, Defendants answered Plaintiffs' FAC on March 3, 2014. *See* Answer, ECF No. 18. On  
28 March 27, 2013, Defendants filed a motion for judgment on the pleadings under Rule 12(c). *See*

1 Motion, ECF No. 21; Memo, ECF No. 24.<sup>2</sup> Plaintiff filed an opposition on April 10, 2014, and  
2 Defendants filed a reply on April 17, 2014. *See* Opposition, ECF No. 26; Reply, ECF No. 27.

3 **ANALYSIS**

4 **I. LEGAL STANDARD**

5 “After the pleadings are closed – but early enough not to delay trial – a party may move for  
6 judgment on the pleadings.” Fed. R. Civ. P. 12(c). “[T]he same standard of review applicable to a  
7 Rule 12(b) motion applies to its Rule 12(c) analog,” because the motions are “functionally  
8 identical.” *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). A Rule 12(c)  
9 motion may thus be predicated on either (1) the lack of a cognizable legal theory or (2) insufficient  
10 facts to support a cognizable legal claim. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699  
11 (9th Cir. 1990). When considering a motion to dismiss under Rule 12(c), the court “must accept all  
12 factual allegations in the complaint as true and construe them in the light most favorable to the  
13 non-moving party.” *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). “A judgment on the  
14 pleadings is proper if, taking all of [plaintiff]’s allegations in its pleadings as true, [defendant] is  
15 entitled to judgment as a matter of law.” *Compton Unified School Dist. v. Addison*, 598 F.3d 1181,  
16 1185 (9th Cir. 2010).

17 Although a court generally is confined to the pleadings on a Rule 12(c) motion, “[a] court may,  
18 however, consider certain materials – documents attached to the complaint, documents incorporated  
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20 <sup>2</sup> Defendants also filed a request for judicial notice that asks the court to take judicial notice  
21 of pleadings and orders already filed in this action. *See* Request for Judicial Notice, ECF No. 22.  
22 Because these documents are already filed in the docket for this action, it is unnecessary for the  
23 court to take judicial notice of them. *See Johnson v. Haight Ashbury Med. Clinics, Inc.*, No.  
24 C-11-02052-YGR, 2012 WL 629312, at \*1 (N.D. Cal. Feb. 27, 2012) (denying a request for  
25 judicial notice “because it is unnecessary to take judicial notice of documents in the record in this  
26 action”); *Martinez v. Blanas*, No. 2:06-cv-0088 FCD DAD (PC), 2011 WL 864956, at \*1 n.1 (E.D.  
27 Cal. Mar. 10, 2011) (“Defendant’s request for judicial notice of the second amended complaint will  
28 be denied as unnecessary. The second amended complaint and its exhibits are a part of the record in  
this action.”); *Patoc v. Lexington Ins. Co.*, No. 08-01893 RMW (PVT), 2008 WL 3244079, at \*1 n.3  
(N.D. Cal. Aug. 5, 2008) (“Because this complaint is already before the Court as an exhibit to the  
Notice of Removal, the Court does not need to take judicial notice of this complaint.”); *see also*  
*Jackson v. Med. Bd. of Cal.*, 424 Fed. Appx. 670, 670 (9th Cir. Mar. 25, 2011). Defendants’ request  
therefore is denied.

1 by reference in the complaint, or matters of judicial notice – without converting the motion to  
2 dismiss into a motion for summary judgment.” *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir.  
3 2003); *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999). The Ninth Circuit  
4 has “extended the ‘incorporation by reference’ doctrine to situations in which the plaintiff’s claim  
5 depends on the contents of a document, the defendant attaches the document to its motion to dismiss,  
6 and the parties do not dispute the authenticity of the document, even though the plaintiff does not  
7 explicitly allege the contents of that document in the complaint.” *Knievel v. ESPN*, 393 F.3d 1068,  
8 1076 (9th Cir. 2005) (citing *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998) (holding that the  
9 district court properly considered documents attached to a motion to dismiss that described the terms  
10 of plaintiff’s group health insurance plan, where plaintiff alleged membership in the plan, his claims  
11 depended on the conditions described in the documents, and plaintiff never disputed their  
12 authenticity); *Horsley v. Feldt*, 304 F.3d 1125, 1135 (11th Cir. 2002) (taking into account newspaper  
13 article containing allegedly defamatory statement under the “incorporation by reference” doctrine  
14 where it was “central” to plaintiff’s claim, defendant attached it to the motion for judgment on the  
15 pleadings, and plaintiff did not contest its authenticity)).

## 16 **II. THE MERITS OF DEFENDANTS’ MOTION**

17 Through their motion, Defendants ask the court to grant judgment on the pleadings in their favor  
18 with respect to Plaintiffs’ third claim (and some of the specific allegations made in relation to it),  
19 their fourth claim, and their prayer for attorney’s fees and punitive damages. See generally Memo,  
20 ECF No. 24. Defendants do not challenge Plaintiffs’ first and second claims. Each of Defendants’  
21 challenges is addressed in turn below.

### 22 **A. Plaintiffs’ Third Claim against Mr. Papageorge for IIED and the Related Allegations of 23 Severe and Extreme Mental and Emotional Distress**

24 Plaintiffs’ third claim is against Mr. Papageorge for IIED. *See* FAC, ECF No. 1-7 ¶¶ 16-18. In  
25 California, “[a] cause of action for intentional infliction of emotional distress exists when there is (1)  
26 extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard  
27 of the probability of causing, emotional distress; (2) the plaintiff’s suffering *severe or extreme*

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1 *emotional distress*;<sup>3</sup> and (3) actual and proximate causation of the emotional distress by the  
 2 defendant's outrageous conduct.”<sup>4</sup> *Kelley v. Conco Cos.*, 196 Cal. App. 4th 191, 215 (Cal. Ct. App.  
 3 2011) (emphasis added).

4 Defendants argue simply that Plaintiffs' IIED claim fails because the June 7 Stipulation bars  
 5 Plaintiffs from claiming severe and extreme mental and emotional distress. *See Motion*, ECF No. 21  
 6 at 1; *Memo*, ECF No. 24 at 4.<sup>5</sup> And if this is the case, Defendants say that Plaintiffs' allegations of  
 7 severe and extreme mental and emotional distress, *see FAC*, ECF No. 1-7 ¶¶ 12, 15, 17, 18, also  
 8 must fail. *See Motion*, ECF No. 21 at 2; *Memo*, ECF No. 24 at 7-8.

9 The court, however, does not agree with Defendants' broad reading of the June 7 Stipulation.  
 10 For one, the language is clear that what Plaintiffs are barred from doing is bringing a claim for  
 11 mental and emotional distress that is based on depression, PTSD, paranoia, or related psychological  
 12 conditions or that relies upon expert testimony. *See June 7 Stipulation*, ECF No. 1-13 ¶ 6. This  
 13 reading also makes sense given that the June 7 Stipulation was entered into at the same time the  
 14 parties were arguing over Plaintiffs' proposed First Amended Complaint, yet the June 7 Stipulation,  
 15 which was filed a few months before the First Amended Complaint was filed, says nothing about an  
 16 IIED claim or general allegations of severe emotional distress. *See generally id.* Finally, as  
 17 Plaintiffs correctly point out in their opposition, a plaintiff need not submit expert testimony to

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19       <sup>3</sup> “Severe emotional distress [is] emotional distress of such substantial quantity or enduring  
 20 quality that no reasonable man in civilized society should be expected to endure it.” *Fletcher v.*  
*21 Western Life Insurance Co.*, 10 Cal. App. 3d 376, 397 (Cal Ct. App. 1970). “It is for the court to  
 22 determine whether on the evidence severe emotional distress can be found; it is for the jury to  
 23 determine whether, on the evidence, it has in fact existed.” *Id.*

24       <sup>4</sup> A defendant's conduct is “outrageous” when it is so “extreme as to exceed all bounds of  
 25 that usually tolerated in a civilized community. Also, a defendant's conduct must be “intended to  
 26 inflict injury or engaged in with the realization that injury will result.” *Hughes v. Pair*, 46 Cal. 4th  
 27 1035, 1050-51 (Cal. 2009). Defendants seem to concede that the alleged actions of Mr. Papageorge  
 28 do meet the level to qualify as “outrageous.”

29       <sup>5</sup> Defendants also argue that Plaintiffs are judicially estopped from bringing their IIED claim  
 30 because the Superior Court entered the June 7 Stipulation as an order. *See Motion*, ECF No. 21 at 1;  
 31 *Memo*, ECF No. 24 at 4-5. Because the court rejects Defendants' argument that the June 7  
 32 Stipulation bars Plaintiffs from bringing an IIED claim, the court also rejects Defendants' judicial  
 33 estoppel argument.

1 prove an IIED claim; a plaintiff may instead rely only upon lay witness testimony is he or she so  
2 chooses.<sup>6</sup>

3 Accordingly, the court **DENIES** Defendants' motion for judgment on the pleadings as to  
4 Plaintiffs' IIED claim. Given the court's judgment on Plaintiffs' IIED claim, the court also  
5 **DENIES** Defendants' motion with respect to the allegations of severe and extreme mental and  
6 emotional distress in Paragraphs 12, 15, 17 and 18 of the First Amended Complaint.

7 **B. Plaintiffs' Fourth Claim against the Royal Oak for Respondeat Superior Liability**

8 Plaintiffs' fourth claim is against the Royal Oak for *respondeat superior* liability. *Respondeat*  
9 *superior* is properly imposed when the tortfeasor was the "servant" of the party against whom  
10 liability is sought. *Krueger By and Through Krueger v. Mammoth Mountain Ski Area, Inc.*, 873  
11 F.2d 222, 223 (9th Cir. 1989). Generally, the terms "master-servant" are considered synonymous  
12 with "employer-employee." *Id.*; *see* Restatement (Second) of Agency § 220(1) (1958). "[A]n  
13 employee's willful, malicious and even criminal torts may fall within the scope of his or her  
14 employment for purposes of *respondeat superior*, even though the employer has not authorized the  
15 employee to commit crimes or intentional torts." *Lisa M. v. Henry Mayo Newhall memorial*  
16 *Hospital*, 12 Cal. 4th 291, 297 (Cal. Ct. App. 1995).

17 Defendants argue that *respondeat superior* cannot be the basis for a separate, independent claim.  
18 Motion, ECF No. 21 at 1-2; Memo, ECF No. 24 at (citing *Lisa M.*, 12 Cal. 4th at 296). Plaintiffs  
19 concede that this is true, *see* Opposition, ECF. No. 26 at 9 (citing *Animal Legal Defense Fund v.*  
20 *HVFG LLC*, No. C 12-05809 WHA, 2013 WL 3242244, (N.D. Cal. June 25, 2013) (dismissing  
21 *respondeat superior* cause of action without leave to amend for this reason)), but they argue that  
22 they nevertheless may rely upon *respondeat superior* as a theory of liability against the Royal Oak  
23 for the underlying tort claims. To accomplish this, the court will dismiss Plaintiffs' fourth claim

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25 <sup>6</sup> That said, the court wishes to address Plaintiffs' statement from their opposition that they  
26 "intend [to] present[] the testimony of their medical providers regarding the extreme emotional  
27 distress for which they were treated." *See* Opposition, ECF No. 26 at 7. While the June 7  
28 Stipulation does not bar their IIED claim, it does bar them from presenting "expert testimony  
regarding [the] usual mental and emotional distress . . . at trial in support of the claim for damages."  
June 7 Stipulation, ECF No. 1-13 ¶ 6. Should this case proceed to trial, Plaintiffs must make sure  
they can reconcile their evidence with the requirements of the June 7 Stipulation.

1 against the Royal Oak for *respondeat superior* liability and will construe Plaintiffs' first three claims  
2 against Mr. Papageorge for battery, assault, and IIED as also having been brought against the Royal  
3 Oak under a *respondeat superior* theory.

4 Defendants' attempt to avoid such an outcome fails. Citing deposition testimony, Defendants  
5 also argue that it is futile to keep the Royal Oak in this case because Mr. Papageorge was not an  
6 employee or agent of the Royal Oak at the time of the incident, so *respondeat superior* liability is not  
7 available here. *See Memo*, ECF No. 24 at 6-7. Such information, however, clearly goes beyond the  
8 four corners of the pleadings and contradicts Plaintiffs' allegation that Mr. Papageorge was an  
9 employee or agent of the Royal Oak, and the court declines at this time to convert Defendants'  
10 motion for judgment on the pleadings into one for summary judgment.

11 Accordingly, the court **GRANTS IN PART** and **DENIES IN PART** Defendants' motion with  
12 respect to Plaintiffs' fourth claim against the Royal Oak.

13 **C. Plaintiffs' Prayer for Relief**

14 In their prayer for relief, Plaintiffs seek, among other things, punitive damages and attorney's  
15 fees. Defendants argue that Plaintiffs are not entitled to punitive damages from the Royal Oak or  
16 attorney's fees. Motion, ECF No. 21 at 2; Memo, ECF No. 24 at 8-9.

17 As for punitive damages, Defendants argue that Plaintiffs do not allege a basis for punitive  
18 damages against the Royal Oak, as Mr. Papageorge was not an employee or agent of the Royal Oak  
19 and the time of the incident. *See Memo*, ECF No. 24 at 8. But as explained above, Mr.  
20 Papageorge's status is a disputed issue of material fact, and the court will not convert Defendant's  
21 motion into one for summary judgment. This means that the court cannot rule at this time that  
22 Plaintiffs are barred from seeking punitive damages from the Royal Oak.

23 As for the attorney's fees, although they cite no legal authority, Defendants point out that under  
24 the "American Rule," each party is responsible for paying its own attorney's fees unless an  
25 applicable statutory or contractual provision allows for the assessment of those fees against the other  
26 party, and argue that Plaintiffs cannot identify any such provision.<sup>7</sup> *See Memo*, ECF No. 24 at 8-9.

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27  
28 <sup>7</sup> In diversity cases involving state law claims, federal courts apply the law of the forum state.  
*See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Kona Enterprises, Inc. v.*

1 Rather than citing broad legal principals, in this diversity case, Plaintiffs should have cited to  
2 California law, *see Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (in diversity  
3 cases involving state law claims, federal courts apply the law of the forum state), which allows a  
4 party to recover attorneys' fees when authorized by statute, contract, or law, *see* Cal. Code Civ.  
5 Proc. § 1033.5(a)(10).

6 In their opposition, Plaintiffs argue simply that "California [law] provides that 'a prevailing party  
7 is entitled as a matter of right to recover costs in any action or proceeding,' including for those in  
8 tort based on the discretion of the Court." Opposition, ECF No. 26 at 10 (quoting Cal. Code Civ.  
9 Proc. § 1032(b) and citing *Berkla v. Corel Corp.*, 302 F.3d 909, 919-20 (9th Cir. 2002) (discussing  
10 the award of attorney's fees to party prevailing on a *contract* claim)).

11 Plaintiffs' argument is not persuasive. To explain: California Code of Civil Procedure §  
12 1032(b)—the only statute cited by Plaintiffs—provides that, "Except as otherwise expressly  
13 provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or  
14 proceeding." California Code of Civil Procedure § 1033.5(a), in turn, specifies which items are  
15 allowable as costs under § 1032, and Subsection (a)(10) provides that attorney's fees, when  
16 authorized by contract, statute, or law, are allowable as costs under § 1032. *See Co-Investor AG v.*  
17 *Fonjax, Inc.*, No. C 08-1812 SBA, 2010 WL 1292767, at \*4 (N.D. Cal. Mar. 31, 2010) ("Attorneys'  
18 fees are not 'costs' under section 1033.5 unless an award of fees is authorized by contract, statute or  
19 law.") (citing Cal. Code Civ. Proc. § 1033.5(a)(10)). Plaintiffs fail to cite to any contract, statute, or  
20 law that allows them to recover attorney's fees as costs under § 1033.5. *See* Opposition, ECF No. 26  
21 at 10. Instead, they argue that § 1032 allows a prevailing party to recover costs under § 1033.5 and  
22 they suggest that § 1032 also satisfies § 1033.5's requirement that a statute allow attorney's fees  
23 to qualify as a cost under section 1032. But it is illogical to allow a law requiring a specific statute  
24 authorizing attorney's fees to qualify as costs, to also satisfy its own requirement, and Plaintiffs cite  
25 no other authority holding otherwise.

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*Estate of Bishop*, 229 F.3d 877, 883 (9th Cir. 2000). California law allows a party to recover  
28 attorneys' fees when authorized by statute, contract, or law. *See* Cal. Code Civ. Proc. §  
1033.5(a)(10).

1 Accordingly, the court **DENIES** Defendants' motion with respect to Plaintiffs' prayer to recover  
2 punitive damages but **GRANTS** Defendants' motion with respect to Plaintiffs' prayer to recover  
3 attorney's fees.

## CONCLUSION

5 For the reasons stated above, the court **GRANTS IN PART** and **DENIES IN PART**  
6 Defendants' motion for judgment on the pleadings. The court **DENIES** Defendants' motion with  
7 respect to Plaintiffs' third claim for IIED claim and the allegations of severe and extreme mental and  
8 emotional distress in Paragraphs 12, 15, 17 and 18 of the First Amended Complaint. The court  
9 **GRANTS IN PART** and **DENIES IN PART** Defendants' motion with respect to Plaintiffs' fourth  
10 claim against the Royal Oak and **DISMISSES** it but construes Plaintiffs' first three claims against  
11 Mr. Papageorge for battery, assault, and IIED as also having been brought against the Royal Oak  
12 under a *respondeat superior* theory. The court also **DENIES** Defendants' motion with respect to  
13 Plaintiffs' prayer for punitive damages but **GRANTS** Defendants' motion with respect to Plaintiffs'  
14 prayer to recover attorney's fees.

## IT IS SO ORDERED.

16 | Dated: April 28, 2014

  
LAUREL BEELER  
United States Magistrate Judge